Gz. 10/23/93

STATE

Law's fate now rests with judge

Decision could be weeks away

By **Angela Dire**
Gazette Telegraph

DENVER — A courtroom battle over Amendment 2 came to a calm — almost anticlimactic — end Friday. Challengers of the law called upon the court to protect one of America's most popularly despised groups, and defenders pleaded for the judiciary to stay out of an issue Americans need to settle for themselves.

"Perhaps the fact we're here, with this particular amendment, highlights the vulnerability of gays, lesbians and bisexuals as a class more than anything else," argued Jean Dubofsky, lead attorney for the six individuals, three cities and one school district challenging the law.

From the same podium inside a somber district courtroom, Colorado's solicitor general urged Judge Jeffrey Bayless to respect the decision of Colorado's voting majority. "Amendment 2 was intended to keep government out of this issue for now," argued Timothy Tymkovich.

Bayless, who will be the first of probably many judges to rule on the amendment's constitutionality, scribbled notes frequently as he listened to the final arguments of both sides. He told them he did not know when or in what form his decision will be delivered, but that it will be issued as quickly as possible. Observers said the decision could be rendered within weeks.

Passed by voters nearly one year ago, Amendment 2 bans any state or local law that would protect gays from discrimination based on their sexual orientation. The two-week-long trial on the measure's constitutionality marked one of the broadest examinations ever of the private lives and public rights of gays and lesbians. It included the testimony of more than 60 nationally known scholars from the fields of law, history, science and political theory.

In a final argument lasting more than an hour, Dubofsky — a former justice on the Colorado Supreme Court — made frequent references to

See **AMENDMENT 2**/A3

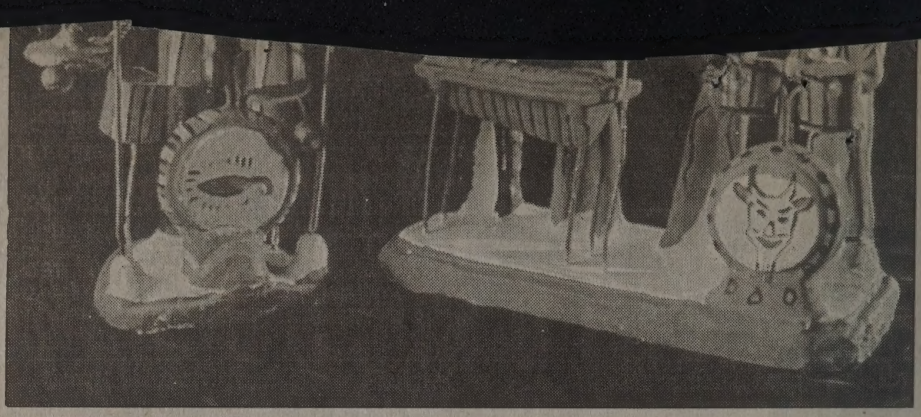
FRIDAY'S HIGHLIGHTS:

THE PLAINTIFFS

Jean Dubofsky, lead attorney for the plaintiffs, said during closing arguments the state had not offered one compelling reason for Amendment 2. She urged Denver District Judge Jeffrey Bayless to reaffirm his initial conclusion that the law violates the right of gays to participate in the democratic process on the same footing as other groups. And she argued Amendment 2 indicates it's time for the courts to step in and protect gay people from discrimination.

THE STATE

Timothy Tymkovich, state solicitor general, urged Bayless to respect the decision of a majority of Colorado's voters. He argued the law ought to stand because it was passed not out of malice but for compelling reasons. And he contended the plaintiffs had not proved gays as a group need help from the courts and cannot attain their goals through the usual legislative avenues.



LIFESTYLE

This skeletal band is an example of the colorful folk art mocking death, and symbolizing Day of the Dead, Mexico's national holiday celebrated Nov. 2.

NATION

▶ **ATTACKERS SENTENCED:** Two white men who doused a black tourist with gasoline and set him on fire as they taunted him with racial epithets got the maximum sentence Friday: life in prison./**A4**

WORLD

▶ **U.N. CHIEF VISITS SOMALIA:** Rejecting President Clinton's recommendation he stay out of Somalia, U.N. Secretary-General Boutros Boutros-Ghali visited peacekeeping forces Friday./**A9**

CITY/REGION

▶ **SUSPECTED KILLER TO STAND TRIAL:** A Fort Collins man accused of luring his victims with a phony rental ad will stand trial for first-degree murder, robbery and kidnapping./**B1**

OPINION

▶ **DENNY TRIAL:** Perhaps this verdict will cure us of the desire to seek in highly publicized court cases some sort of symbolic barometer of social health, writes guest commentator Alan Bock./**B9**

SPORTS

▶ **CU ON GUARD AGAINST**
a week after an impressive win
a week before Nebraska, today
heavily favored Colorado and K
the ingredients for a classic let

BUSINESS

▶ **JAPANESE AUTOMAKERS**
ing auto sales at home and abr
ports awash in red ink. Sound f
time it's not Detroit's Big Three
it's their rivals in Japan./**C6**

LIFESTYLE

▶ **INTERACTIVE TV:** The hor
fined the cult-movie experience
but don't expect "The Rocky H
to have quite the same impact
as it did in theaters./**F1**

HOME

▶ **GLOW OF THE SEASON:** T
grant or plain, candles have a w
holidays./**F8**

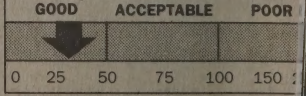
LOCAL FORECAST

Today: Sunny to partly cloudy and pleasant. High 68.
Tonight: Mainly clear. Low 38.
Sunday: Increasing clouds, becoming windy and warm. High 72, low 38.
Monday: Windy and much chillier, chance of a shower. High 48, low 30.
Tuesday: Cold; chance of rain or snow showers. High 40, low 28.

STATISTICS

AIR QUALITY

(3 p.m. FRI. OCT. 22)



OZONE - 34
CARBON MONOXIDE - 3

Amendment 2/Attorneys get in last words

From A1

many of those expert opinions.

But she began by reminding the judge of his own: In January, Bayless stopped Amendment 2 from becoming law with a temporary injuction. At that time, he decided it was likely unconstitutional and ought to be scrutinized by the court because it might violate the fundamental right of gays to seek laws benefiting them. The Colorado Supreme Court agreed with Bayless and demanded that the attorney general's office offer a "compelling state interest" for the amendment — a legal standard all but impossible to meet.

One by one, Dubofsky attacked the state's justifications for Amendment 2.

The state contends that the law prevents a destructive, city-by-city and county-by-county battle over gay rights. But Dubofsky argued that what the law really eliminates is democratic debate. "One simply cannot suppress one side of the debate because one does not like the fact that there may be controversy," she said.

The state argues that the law protects the state's limited fiscal resources in fighting discrimination against groups such as racial minorities with a much longer and more severe history of discrimination. But Dubofsky said if Amendment 2 supporters really intended to do that, they also would have campaigned against protection for many other groups - women and the disabled, those older than 40 and "those who smoke."

The state contends that Amendment 2 protects the fundamental right to privacy — the people's right to associate with whom they please. But Dubofsky asserted: "There is no privacy interest in ensuring that the government reinforce private hostilities toward gays and lesbians."

In his own hourlong argument for the amendment, Tymkovich argued that Coloradans have no hostility toward gays: "Colorado is not the hate state. Colorado has an extremely tolerant and progressive view of homosexuals." Looking up at the judge, he added: "Coloradans see gay people just like they see you and me."

What truly motivated the proponents of Amendment 2 and the state's voters, Tymkovich continued, was not inherent prejudice but practical frustration over the plethora of groups seeking protection from the government. "Where do you draw the line?" he asked. "It's clear in this case the plaintiffs have much more in mind than equal rights with heterosexuals."

Indeed, plaintiffs hope that more than striking down Amendment 2 the courts will decide, once and for all, that the government cannot treat people differently based on their sexual orientation. It would be a sweeping precedent, calling into question everything from the military's policy on gays to laws that recoginize only heterosexual marriage.

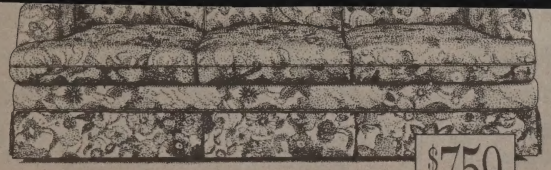
Both sides spent a considerable amount of time on the point. Dubofsky argued that gays have a long history of discrimination and share a characteristic they can't change. It is time, she said, that the government recognize sexual orientation has nothing to do with a person's ability and moral character. But judging from polls that show gays are generally deplored by most Americans, she said, they are a long way from getting the basic protection they need in employment, housing and public accommodations. That is why, she said, they need the help of the judiciary.

But Tymkovich argued that gays, as a group, didn't need that kind of protection from the courts. Not only have they won the support of many local, state and national politicians, including President Clinton, they have substantial financial resources and the support of the mass media. "That's growing power, your honor," he said. "This isn't even a close call."

Dubofsky got the last word, offering a swift and succinct rebuttal that brought the trial to an end. "If Amendment 2 goes into effect," she said, "gays, lesbians and bisexuals will be without political power."

WHAT'S NEXT:

Judge Jeffrey Bayless has not said when he will rule on Amendment 2's constitutionality and whether his decision will be delivered orally or in writing. But whatever it is, his decision is certain to be appealed to higher courts.



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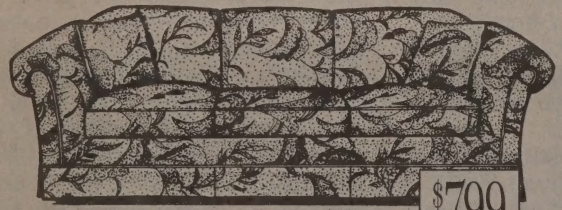

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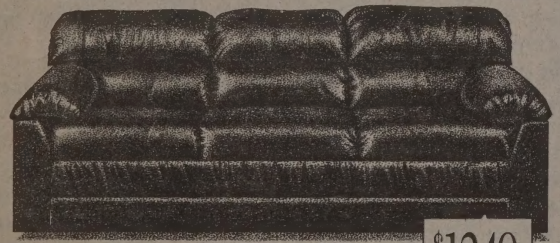

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